










# WASHINGTON SUPREME COURT

| Justice                           |  |  |  |  |  |  |  |  |  |
|-----------------------------------|---|---|---|---|---|--|---|---|---|
| Confidence Score                  | Mild Democrat   | Indeterminate   | Mild Democrat   | Mild Democrat   | Mild Democrat   | Mild Democrat  | Mild Democrat   | Mild Democrat   | Mild Democrat   |
| Opinion Partners                  |   |   | ✓   |   |   |  |   |   | ✓   |
| Dissenting Minority               | ✓   |   | ✓   |   | ✓   |  |   |   | ✓   |
| Determining Majority <sup>6</sup> |   | ✓   |   |   |   |  | ✓   | ✓   |   |
| Lone Dissenter                    |   |   |   |   |   |  |   |   |   |

## SUMMARY

- ▶ Number of justices: **9**
- ▶ Number of cases: **66**
- ▶ Percentage of cases with a unanimous ruling: **59.1%**
- ▶ Justice most often writing the majority opinion: **Justice Gonzalez and Madsen**
- ▶ Per curiam decisions: **1**
- ▶ Concurring opinions: **15**
- ▶ Justice with most concurring opinions: **Justice Gonzalez (5)**
- ▶ Dissenting opinions: **24**
- ▶ Justice with most dissenting opinions: **Justice Madsen (7)**

## COURT CONTENTION

The Washington Supreme Court was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 39 cases, which was 59.1 percent of the time the court issued a ruling. At least one justice dissented in each of those cases.

## Opinion partners

The two pairs of justices who allied most often in the majority were Justices Johnson and Owens and Justices Owens and Stephens. Both of these pairs of opinion partners allied in the majority together 54 times. In our *Ballotpedia Courts: State Partisanship* study, Owens recorded an indeterminate partisan

<sup>6</sup> The fifth member of the majority composed by Stephens, Madsen, Johnson, and Owens varied throughout the year, as different justices filled vacancies.

Confidence Score. Justice Johnson recorded a Mild Democratic Confidence Score. Justice Stephens recorded a Mild Democratic Confidence Score.

The two justices who allied with one another most often in dissent were Justices González and Yu. González and Yu dissented together seven times, which was 30.4 percent of all cases with dissents. González only dissented in one decision in which Yu did not also dissent; in that decision Yu wrote an opinion concurring in part and dissenting in part. In our *Ballotpedia Courts: State Partisanship* study, González recorded a Mild Democratic Confidence Score, and Yu recorded a Mild Democratic Confidence Score.

### **Dissenting minority**

The group of four justices who allied most often in dissent were Justices Montoya-Lewis, McCloud, González, and Yu. Montoya-Lewis, McCloud, González, and Yu dissented in the same case three times, which was 66.7 percent of all cases decided by split decision.

### **Determining majority**

The Washington Supreme Court decided six cases 5-4 in 2020. No justice was in the majority in all six of those cases. Justices Owens and Stephens were in the majority in five of the six cases decided by split decision in 2020.

The four justices who most frequently allied in the majority were Justices Stephens, Madsen, Johnson and Owens. The fifth member of the majority composed by Stephens, Madsen, Johnson, and Owens varied throughout the year, as different justices filled vacancies. Justice Wiggins joined them in the majority three times, substitute Justice Fairhurst joined them in the majority once, Justice Worswich joined them in the majority once, and Justice Whitener joined them in the majority once.

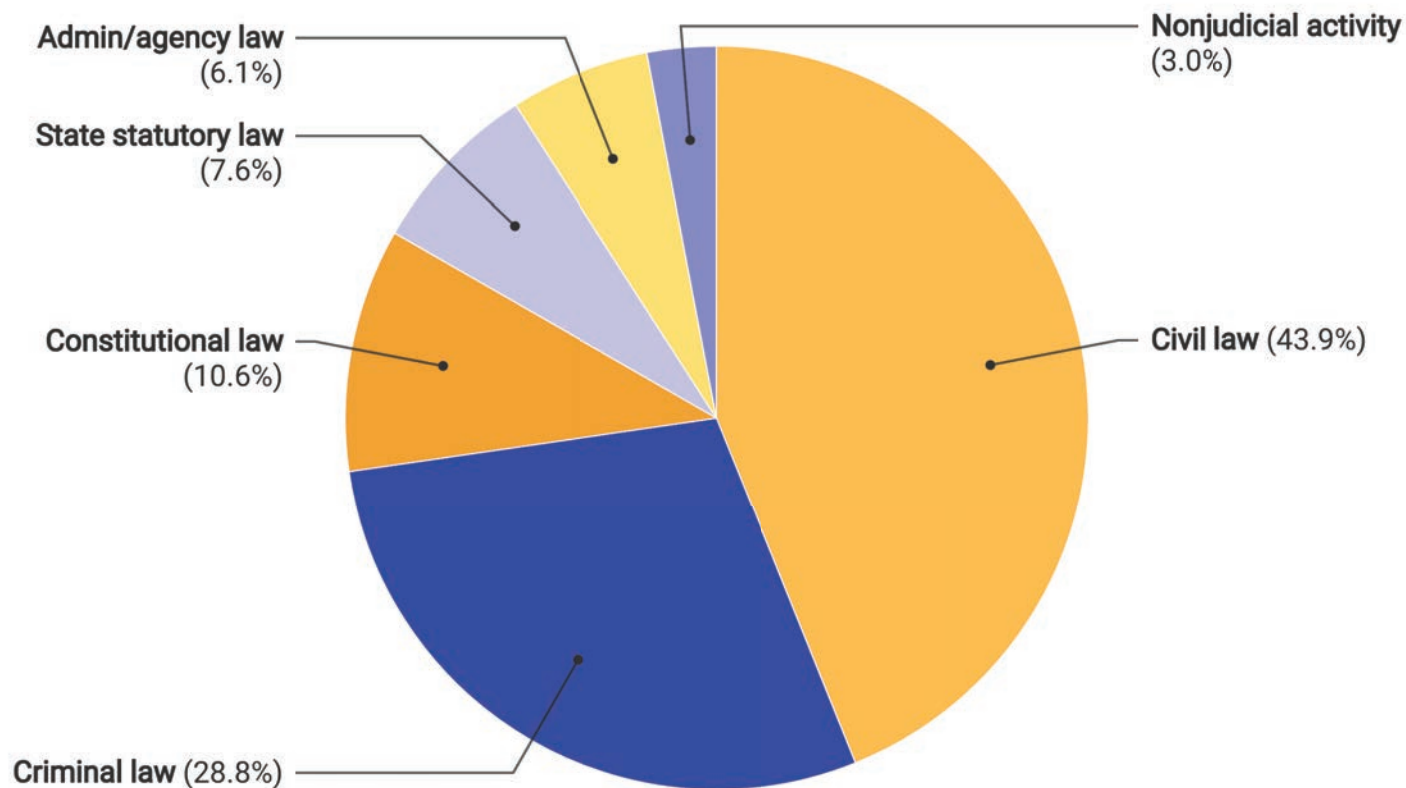
### **Lone Dissenter**

In 2020, Justice Madsen dissented alone two times, which was more than any other justice. There was a lone dissenter in two cases. Justices McCloud and Johnson were each lone dissenters once in 2020.

## **COURT JURISDICTION**

The Washington Supreme Court has original jurisdiction in habeas corpus, quo warranto and mandamus as to all state officers, and appellate jurisdiction in all actions and proceedings. Its appellate jurisdiction shall not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars (\$200) unless the action involves the legality of a tax, impost, assessment, toll, municipal fine, or the validity of a statute.

## Case types decided by Washington State Supreme Court, 2020



**BALLOT**PEDIA

The most common cases heard by the Washington Supreme Court in 2020 were civil cases. Of the 66 cases it heard, 28 were civil cases, which was 43.9 percent of its caseload. A civil case is one that involves a dispute between two parties, one of whom seeks reparations or damages.

The second most common cases that reached the supreme court were criminal cases. A criminal case involves a final criminal appeal before the court of last resort. The Washington Supreme Court heard 19 criminal cases in 2020, or 28.8 percent of its total caseload for the year.

The third most common cases that reached the court were Constitutional cases. A constitutional case is one that involves the violation of a right expressly protected by the Constitution of the United States. The Washington Supreme Court heard seven Constitutional cases in 2020, or 10.6 percent of its total caseload for the year. Prominent cases

## PROMINENT CASES

### *Calvin v. Inslee*

| Justice                                 | Sheryl McCloud             | Susan Owens              | Steven González            | G. Helen Whitener | Raquel Montoya-Lewis       | Charles W. Johnson       | Debra Stephens           | Barbara A. Madsen        | Mary Yu                    |
|---|----------------------------|--------------------------|----------------------------|-------------------|----------------------------|--------------------------|--------------------------|--------------------------|----------------------------|
| Calvin v. Inslee (Majority and Dissent) | Joining González's dissent | Joining majority opinion | Writing dissenting opinion | Not participating | Joining González's dissent | Joining majority opinion | Joining majority opinion | Joining majority opinion | Joining González's dissent |

- ◆ **Contention:** Justice Stephens wrote the majority opinion. She was joined by Justices Madsen, Johnson, Owens, and Worswich, who filled in for Justice Whitener. Justice González wrote a dissenting opinion and was joined by Justices Montoya-Lewis, McCloud, and Yu.
- ◆ **Summary:** Five prisoners sued the Department of Corrections seeking a writ of mandamus to direct Governor Jay Inslee (D) and Secretary Sinclair (D) to immediately release about 13,000 at-risk inmates amid the COVID-19 pandemic. Petitioners argued that constitutional and statutory sources impose a duty on the Governor and Secretary to take all “reasonable steps to protect the inmate population from COVID-19.” The Washington Supreme Court found that no matter how dire the emergency, there was no duty to release prisoners, because doing so would violate separation of powers principles. The Court explained that a writ of mandamus is often forbidden because it allows a court to command another governmental branch to take a particular action. Additionally, because respondents claim release is the only reasonable step, and no law commands the Governor or Secretary to release inmates, the Court would be exceeding its constitutional authority in requiring specific actions not required by law.
- ◆ **Majority argument:** Justice Stephens wrote: “Consistent with our limited authority to compel only mandatory, nondiscretionary action by another branch of government, we deny the petitioners’ claims for extraordinary judicial relief. We are not indifferent to the serious dangers faced by petitioners and other inmates at heightened risk of contracting COVID-19 in Washington’s correctional facilities, but how the governor and secretary address these dangers and also protect the public necessarily involves the exercise of discretionary authority that we cannot direct. Even if we could do so, nothing before us suggests how we would succeed where those charged with running Washington’s correctional system have failed. Today’s decision resolves these claims on the facts before us and does not excuse the governor and secretary from their continuing obligations toward these petitioners and other inmates. At the same time, we will not excuse ourselves from our obligation to respect the discretion vested in another branch of government and uphold the constitutional separation of powers.” (*Calvin et al. v. Inslee et al.*, No.

98317-8, 25 (Wash. 2020))

- ◆ **Dissenting argument:** Justice González wrote: “The courts have a role to play in protecting individual rights in times of emergency. It is true that we must not usurp the essential functions of another branch of government. But we too have an essential function: to say what the law is, to say whether the law has been violated, and to order relief when relief is warranted. If we are to fulfill our essential judicial function, we must decide whether challenged acts or omissions violate the constitution, even when making that decision is difficult. And we must learn from our history—a history which shows that in times of distress, courts all too often defer to the executive branch and sacrifice precious liberties, especially for our most vulnerable. In *Korematsu v. United States*, for example, amidst fear in a time of war, the judicial branch sanctioned a repulsive, unjustified racial classification that led to enormous suffering authorized by an executive order. 323 U.S. 214, 215, 65 S. Ct. 193, 89 L. Ed. 194 (1944), abrogated by *Trump v. Hawaii*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018); see *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984) (granting a postconviction writ of coram nobis 40 years later vacating Mr. Korematsu’s conviction). This tragic history stands as a caution that in times of crisis, the judiciary must not invoke separation of powers to avoid subjecting government actions to close scrutiny and accountability. Because the majority has abdicated this responsibility with its near-summary dismissal of the petitioners’ claims, I dissent.” (*Colvin et al. v. Inslee et al.*, No. 98317-8, 1-2 (Wash. 2020))

### *Ass’n of Wash. Bus. v. Dep’t of Ecology*

| Justice  | Sheryl McCloud           | Susan Owens                  | Steven González        | Charles Wiggins        | Mary Fairhurst           | Charles W. Johnson       | Debra Stephens           | Barbara A. Madsen        | Mary Yu                |
|--|--------------------------|------------------------------|------------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------------------|
| Ass’n of Wash. Bus. v. Dep’t of Ecology (Majority and Dissent) | Joining majority opinion | Writing a dissenting opinion | Joining Owen’s dissent | Joining Owen’s dissent | Joining majority opinion | Joining majority opinion | Writing majority opinion | Joining majority opinion | Joining Owen’s dissent |

- ◆ **Contention:** Justice Stephens wrote the majority opinion. She was joined by Justices McCloud, Madsen, Johnson, and Fairhurst. Justice Owens wrote a dissenting opinion and was joined by Justices González, Yu, and Wiggins.
- ◆ **Summary:** The Washington Department of Ecology created the Washington Clean Air Rule in 2016 seeking to regulate indirect emissions of greenhouse gasses from business and utilities. The rule created emissions standards for three types of businesses: stationary sources of emissions, petroleum producers and importers, and natural gas distributors. The rule required these businesses to reduce their greenhouse gas emissions by 1.7 percent each year using two methods: modifying their operations to reduce their emissions and obtaining emission reduction units. The court ruled



that the Department of Ecology exceeded its statutory authority under the clean air act. The court noted that the legislature should determine the scope of the Department of Ecology's authority to regulate greenhouse gasses.

- ◆ **Majority argument:** Justice Stephens wrote: "By the Act's plain terms, emission standards are designed to limit the release of air contaminants by regulating direct emitters. The Act provides no authority for Ecology to use emission standards to regulate businesses and utilities that merely distribute products that generate greenhouse gases when they are combusted somewhere down the line. Left unchecked, Ecology's expansive interpretation of its own authority would sweep many newly branded "indirect emitters" into the regulatory web. We are confident that if the State of Washington wishes to expand the definition of emission standards to encompass "indirect emitters," the legislature will say so. In the meantime, Ecology may not claim more authority than the legislature has granted in the Act." (*Ass'n of Wash. Bus. v. Dep't of Ecology*, No. 95885-8, 25 (Wash. 2020))
- ◆ **Dissenting argument:** Justice Owens wrote: "The legislature has authorized the Department to regulate both direct and indirect emitters. But the majority's conclusion not only improperly restricts the Department's authority to regulate indirect emitters but also contradicts the broad authority the legislature provided to the Department to reduce such emissions in our state. Because the Rule properly constitutes an emission standard as applied to natural gas distributors and petroleum product producers and importers, the Department did not exceed its statutory authority in promulgating the Rule, which should be held valid in whole. Therefore, I respectfully dissent and would reverse the trial court's ruling." (*Ass'n of Wash. Bus. v. Dep't of Ecology*, No. 95885-8, 8 (Wash. 2020))

### *Washington v. Grocery Mfrs. Ass'n*

| Justice   | Sheryl McCloud   | Susan Owens              | Steven González          | Charles Wiggins   | Raquel Montoya-Lewis     | Charles W. Johnson       | Debra Stephens           | Barbara A. Madsen        | Mary Yu                  |
|---|--|--------------------------|--------------------------|-------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Washington v. Grocery Mfrs. Ass'n (Majority, Concurrence and Dissent) | Writing an opinion concurring in part and dissenting in part | Joining majority opinion | Joining majority opinion | Not participating | Joining majority opinion | Joining majority opinion | Joining majority opinion | Joining majority opinion | Writing majority opinion |

- ◆ **Contention:** Justice Yu wrote the majority opinion. She was joined by Justices Montoya-Lewis, Stephens, González, Owens, and Fairhurst. Justice Johnson wrote an opinion concurring in part and dissenting in part and was joined by Justice Madsen. Justices Johnson and McCloud wrote separate opinions concurring in part and dissenting in part.
- ◆ **Summary:** In 2013 Washington voters rejected Initiative 522, which

would require labels on all packaged foods containing GMOs. The Grocery Manufacturers Association opposed state-level GMO labeling laws. Over the course of the election cycle, the Grocery Manufacturers Associations solicited \$14 million in contributions from member companies. They spent \$11 million on the “No on 522” political committee. The Grocery Manufacturers Association was not registered as a political committee and did not make reports to the Public Disclosure Commission. The state filed suit against the Grocery Manufacturers Association, alleging that they intentionally violated the Fair Campaign Practices Act (FCPA). A trial court agreed with the state and imposed a \$6 million base penalty and trebled the penalty to \$18 million. The Grocery Manufacturers Association argued that the act’s practices violated their first amendment right to free political speech. The supreme court determined that the act was consistent with the first amendment and they remanded the case to the court of appeals for consideration of whether the penalty imposed violated the excessive fines clauses of the federal and state constitutions.

- ◆ **Majority argument:** Justice Yu wrote: “GMA asks us to significantly curtail the application of the FCPA in ways that are not required by the statutory language, relevant precedent, or the state and federal constitutions. We decline to do so. We therefore affirm that GMA violated the FCPA and that the FCPA is constitutional as applied. We further hold that the word intentional has its ordinary meaning for purposes of FCPA violations and therefore reverse the Court of Appeals in part. Finally, we remand to the Court of Appeals for consideration of GMA’s excessive fines claim.” (*State v. Grocery Mfrs. Ass’n*, No. 96604-4, 40 (Wash. 2020))
- ◆ **Johnson’s argument concurring in part and dissenting in part:** Justice Johnson wrote: “Where I disagree is with the majority’s statutory interpretation of former RCW 42.17A.765(5) (2010) on the applicability of the trebling provision. On this issue, I would affirm the Court of Appeals’ statutory interpretation and vacate the trebled penalty. The majority remands to the Court of Appeals for resolution of the constitutional excessive fines issue, but before the constitutional claims can be addressed, the trial court must correct the penalty. The trial court erred by imposing a \$6 million base penalty, trebled to \$18 million, without properly considering all of the factors enumerated in Title 390 WAC, which the majority agrees should be considered. The portion of the trial court’s order setting the penalty should be vacated and this case remanded for the trial court to properly apply the factors under WAC 390-37-182(1), particularly the comparability factor.” (*State v. Grocery Mfrs. Ass’n*, No. 96604-4, 1 (Wash. 2020))
- ◆ **McCloud’s argument concurring in part and dissenting in part:** Justice McCloud wrote: “I agree with the majority that the Grocery Manufacturers Association (GMA) meets the statutory definition of ‘political committee’ under the Fair Campaign Practices Act

(FCPA), ch. 42.17A RCW. I also agree that the FCPA satisfies First Amendment requirements as applied to GMA and the Defense of Brands (DOB) account. U.S. CONST. amend. I. And I agree that the courts below failed to apply the Eighth Amendment's bar on excessive fines to the huge base and trebled penalties in this case. U.S. CONST. amend. VIII." (*State v. Grocery Mfrs. Ass'n*, No. 96604-4, 1 (Wash. 2020))